IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4512 OF 2005

The Administrator ..Petitioner
Vs.
Bharat Bapu Bichitkar & Ors. ..Respondents

Mr.P.R.Arjunwadkar for the Petitioner.
Mr.N.V.Walawalkar, Senior Advocate with Mr.S.A.Sawant for Respondent No.1.
Mr.G.S.Godbole with Mr.D.W.Bhosale for Respondent Nos.2 and 6.
Mrs.M.P.Thakur, A.G.P. for Respondent Nos.3 and 5.

WITH
WRIT PETITION NO.6781 OF 2005

Mrs.Dhanashri Ramchandra Kapashilkar
Nee
Ms.Sulbha Govind Moholkar ...Petitioner

Vs.

The Administrator and Others ...Respondents

Mr.Sanjeev P.Kadam and Mr.Jagdish Choudhari for the Petitioner.
Mr.G.S.Godbole with Mr.D.W.Bhosale for Respondent Nos.2 and 6.
Mrs.M.P.Thakur,A.G.P. for Respondent Nos.4 and 5.
Mr.N.V.Walwalkar, Senior Advocate with Mr.S.A.Sawant for Respondent No.7.

CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.
DATE : 7TH OCTOBER, 2006

P.C.

1. Heard. Rule. Respondents waive service.

2. Both these Petitions take exception to the judgment and order rendered by the University and College Tribunal at Pune in Appeal No.11 of 2003 on 5th May, 2005, which was filed by the Respondent No.1 in the first Petition, who has impleaded as Respondent No.7 in the second Petition. The Appeal came to be

allowed with directions to the Management to reinstate the Appellant to the post of Lecturer in history forthwith and pay him back wages from the date of termination of his service, as alleged. The first Petition came to be filed by the Administrator as appointed by the State Government under Section 3(1) of the Maharashtra Educational Institutions (Transfer of Management) Act, 1971 and the rules thereunder from Shikshan Prasarak Mandal, Mangalwedha, Tq.Mangalwedha, which runs the subject college by name Dalit Mitra Kadam Guruji, Science & Arts College at Magalwedha. The second Petition has been filed by the Lecturer, who claims to have been appointed validly by the Management in February,2000 and she was continued all along in place of the original Appellant.

3. The second Petitioner has claimed that she was a necessary party in the Appeal before the Tribunal and at no point of time she was impleaded in the said Appeal and was noticed for being heard. By the impugned judgment and order she has been displaced, as the post of Lecturer in History was single post and claims that the on the reinstatement of the Appellant she likely to lose her job. Under these circumstances this Court (Single Bench) directed not to terminate the Petitioner's service by an order dated 24th October,2005 and till then the first Petition was not moved for admission, though it was on Board on 14th September,2005 and none was present for the Petitioner

- Administerator. As both the Petitions impugn the same order, they have been heard together by us, after calling the Record and Proceedings from the Tribunal.

4. The documents placed on record in Writ Petition No.6781 of 2005 have been perused by us and though as of now the tenure of the Administrator of six years, has already expired, the Petitioner - Lecturer was undoubtedly required tobe impleaded as a necessary party and she has made out a prima facie case before us that she was at the relevant time i.e. when the Appeal was filed before the Tribunal, in the employment of the said College. The parties are at logerheads as to whether there was only one college and/or there was any parallel college being run by Dr.Kadam, who was the acting Principal of the subject college i.e. Dalit Mitra Kadam Guruji Science and Arts College, Mangalwedha. Failure to afford an opportunity of hearing to the Petitioner in the second Petition certainly resulted in mis-carriage of justice and without going into the merits and demerits, which is required to be done by the Tribunal, we deem it appropriate to remand the Appeal for fresh decision to the Tribunal by quashing and setting aside the impugned order. It would be necessary that the Petitioner-Lecturer is impleaded as an Additional Respondent in the Appeal filed by the Appellant and she will have to be allowed to file a reply. The Appellant as well as the Management will have to file

their counter, if any, and after hearing all the parties, the Tribunal will have to decide the Appeal afresh. At the same time, both the Petitioners as well as the original Appellants claim to be in service as at present. It was contended by Mr.N.V.Walawalkar, the learned Senior Counsel appearing for the Appellant that consequent to the impugned order passed by the Tribunal he has been reinstated and Mr.Kadam the learned Counsel appearing for the Petitioner-Lecturer stated that the Petitioner has been all along in service and has been drawing her salary regularly from the very same college. The Petitioner - Lecturer claims that the Appellant is in employment of the rival college, which has allegedly been started illegally. These issues can be gone into by the Tribunal and we need not deal with the same, except to state that the status-quo as of now in respect of the employment of both of them will have to be maintained.

5. Hence, the Petitions succeed partly and the impugned judgment and order is hereby quashed and set aside. Appeal No.11 of 2003 is restored to the File of the Tribunal so that the Petitioner - Lecturer is added as a necessary party in the array of Respondents and after hearing all the parties concerned, the Tribunal will decide the Appeal afresh, as expeditiously as possible and preferably within a period of six months from the receipt of this Writ.

6. Rule made absolute accordingly with no order as to costs. Writ to go to the concerned parties including the Tribunal, forthwith.

(NARESH H.PATIL,J.) **(B.H.MARLAPALLE,J.)**